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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 134 (VSB)

5 CALVIN DARDEN, JR.,

6 Trial

7 Defendant.

8 -----x

9 New York, N.Y.  
10 September 23, 2024  
11 9:30 a.m.

12 Before:

13 HON. VERNON S. BRODERICK,

14 District Judge  
-and Jury-

15 APPEARANCES

16 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

17 KEVIN MEAD

STEPHEN J. RITCHIN

18 WILLIAM C. KINDER

BRANDON C. THOMPSON

Assistant United States Attorneys

19 DONALDSON CHILLIEST & MCDANIEL LLP

20 BY: XAVIER R. DONALDSON

-and-

21 ANTHONY RICCO

STEVEN Z. LEGON

22 ERICA A. REED

Attorneys for Defendant

23 Also Present:

24 Alexander Ross, Paralegal

Arjun Ahuja, Paralegal

25 Melissa Baccari, FBI Special Agent

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1 THE COURT: Okay. I apologize for the delay, both  
2 ways. So I am testing negative. I will wear my mask during  
3 the trial and when we're questioning the jurors, especially  
4 when we're doing sidebar. So the way I intend to proceed, all  
5 of the jurors are going to be over across the way in 519. The  
6 55 plus the 30, whatever new folks. Once we're done here, my  
7 intention is to bring over the 55 or so who have been with us  
8 already who had heard my initial comments, and several of whom  
9 had already been questioned. Once they're here, my initial  
10 question for all of them, the full panel is -- and I was  
11 planning on combining it, but I'll hear from the parties also,  
12 whether or not any of the prospective jurors have done any  
13 research or spoken substantively about the case. And I'll just  
14 ask them to raise their hands.

15 If they do, it wasn't my plan to engage in any  
16 questioning, any back and forth. My thought was that those  
17 jurors would just be excused, but obviously I'll hear from the  
18 parties. I mean the two questions are slightly different, so  
19 let me hear first from the government and then from the  
20 defense.

21 MR. MEAD: Your Honor, I think that approach makes  
22 sense. I think I would not say in advance that you're going to  
23 dismiss any jurors on that basis because I think that would  
24 encourage them.

25 THE COURT: All I intend to do is ask those questions,

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1 ask them to raise their hands, and then basically ask them to  
2 get up and say they're excused.

3 MR. MEAD: That makes sense, your Honor.

4 MR. DONALDSON: Just so I'm clear, so we're asking the  
5 ones that were previously here whether they've done any  
6 research related to this case?

7 THE COURT: Correct, and substantive, any substantive  
8 conversations relating to this case.

9 MR. DONALDSON: Do we need to ask the question related  
10 to Dancing with the Stars since it has been on?

11 THE COURT: My view of that is that I don't --  
12 although I'm going to tell them not to, if they have started  
13 watching and not to watch it, what would be the prejudice if  
14 they've watched Dancing With the Stars and seen a witness in  
15 Dancing With the Stars? Wouldn't it be the same as if someone  
16 is just still playing professional basketball? In other words,  
17 I'm not sure I'm going to excuse any jurors; A, because I don't  
18 believe I told them not to watch Dancing With the Stars; but,  
19 B, that question is or that issue is slightly less -- well, I  
20 don't see it as directly related to the case as the other two  
21 questions.

22 MR. DONALDSON: I respectfully disagree. I think that  
23 with media now, particularly social media, general media,  
24 *et cetera*, the goal is to cast certain persons in certain  
25 lights when they're on media or on social media. So if he's

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1 being marketed on Dancing With the Stars and even watching him  
2 on Dancing With the Stars, then they may be getting some  
3 information or different things about him that they wouldn't  
4 otherwise know if it was a regular witness.

5 In most cases when we have jury selection or trials we  
6 tell the jurors not to, of course do any research, but also not  
7 to do anything about any particular witness, particularly  
8 material witnesses. So because of the nature of this case and  
9 the nature of that witness and his personality, *et cetera*, I  
10 would not want them looking at or watching anything related to  
11 Dwight Howard because I believe that, as he's being marketed on  
12 Dancing With the Stars, *et cetera*, they're trying to promote a  
13 certain image that may not be the right image for entertainment  
14 purposes. And I believe that kind of promotion, marketing  
15 *et cetera* may some how affect the jury related to his  
16 testimony. So I respectfully disagree with the Court, but I  
17 think that should be discussed as well.

18 THE COURT: Okay. I'll hear from the government.

19 MR. MEAD: Your Honor, this has already -- we agree  
20 with the Court. We don't think that needs to be a threshold  
21 question here. It's already the question that the Court is  
22 planning to ask in part two once the panel has been qualified.  
23 I did not watch Dancing With the Stars. It sounds like there  
24 was nothing about this case. If there was, I assume defense  
25 would have said something. And of course if defense wants to

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1 strike anyone who watched the show, the Court will be able to  
2 inquire about that later on. We don't need to do it now as  
3 this kind of very brief threshold exercise.

4 THE COURT: All right. As I mention, I don't think  
5 that, quite frankly, I was in any way required to ask a  
6 question about Dancing With the Stars. The parties agree that  
7 I should and I will, but I don't believe that it is a question  
8 that preliminary -- I'm not going to ask the 55 that come back  
9 whether or not they watched Dancing With the Stars initially,  
10 but I will do so in due course as we've discussed and as are  
11 part of the questions. Yes.

12 MR. DONALDSON: There's one other matter. I sent a --  
13 it may have been my confusion last Tuesday, but as I said via  
14 email, my belief last Tuesday when we left was that the Court  
15 had dismissed those jurors and that they were not to return.  
16 Because of that, the government and I had conversations related  
17 to a particular juror, Mr. Letterman, and we talked about my  
18 son's interaction with Mr. Letterman. We even talked about  
19 whether or not either one of us would have picked him. It's my  
20 belief that those jurors have been discharged last Tuesday.

21 After court on Tuesday as I was walking away from the  
22 building, Mr. Letterman was walking towards me. I introduced  
23 myself. He recalled that he spoke to my son. We shook hands  
24 and then we left. It was my understanding that he would not be  
25 coming back today, but he is downstairs or he is in room 519.

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1 So just to put that on the record, he's here, and that was my  
2 interaction with him last week.

3 THE COURT: Okay. Any objection having my deputy clerk  
4 indicate to Mr. Letterman that he can head back across the  
5 street?

6 MR. MEAD: No objection, your Honor.

7 THE COURT: All right. We'll do that. Obviously I  
8 was unaware of any interaction with any members of the panel  
9 until now. I didn't know that your son had interacted with  
10 Mr. Letterman. Obviously it's a very unique situation, and I  
11 wasn't planning -- and none of us were planning on these jurors  
12 coming back. It just by happenstance that we were able to do  
13 that. So we'll excuse Mr. Letterman from being a juror in this  
14 case, and I'll do that at the outset before bringing the 55  
15 folks over here. Okay.

16 Let me ask, is there anything else? I obviously have  
17 to deal with the motion *in limine* and the most recent letter  
18 from the defense, but let me hear from the government  
19 concerning whether there's anything else that we need to  
20 discuss before that?

21 MR. MEAD: I think some brief things, your Honor.

22 THE COURT: Yes.

23 MR. MEAD: One, AUSA Thompson had a very brief  
24 interaction with one of the jurors this morning I think not  
25 recognizes that that person was a juror. Maybe Mr. Thompson if

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1 you would just give 30 seconds on that.

2 MR. THOMPSON: Your Honor, I was waiting for the  
3 elevator to come to the courtroom and an individual who I  
4 thought was a court reporter given that she had a headset asked  
5 if this elevator went to five as she was looking for 519. I  
6 said any of these elevators does go to the fifth floor, and  
7 then we rode the elevator together. I think in that brief  
8 exchange that was about 12 seconds she said she was looking for  
9 Judge Broderick.

10 THE COURT: Okay. All right. Yes.

11 MR. MEAD: On the voir dire. Right before lunch last  
12 week we pointed out to the Court that I think Docusign the  
13 company was not listed on the voir dire sheets, and perhaps the  
14 Court could orally add it when it ask the question.

15 THE COURT: I will do so. And with regard to the  
16 interaction, I'll hear from the defense in a moment, but go  
17 ahead. So Docusign. Yes. Mr. Mead.

18 MR. MEAD: The sealed motion is still pending as the  
19 Court mentioned. I think that has some interaction with the  
20 defendant's request for voir dire this morning of course. I  
21 don't know if the Court wants to take that up now.

22 THE COURT: Why don't we talk about the additional  
23 voir dire, and then we could more fend to the next issue. Yes.

24 MR. DONALDSON: Your Honor, you pointed us to respond  
25 to their interaction. We don't have a or see a problem with

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1 that interaction. And just for the clarity and for equity, I  
2 guess I was standing out in the hallway this morning listening  
3 to my earphones, and I don't know maybe eight or nine people  
4 asked me where room 519 was, and so I pointed to that area. So  
5 thank you, sir, for telling us that.

6 THE COURT: Thank you. With regard to both  
7 interactions, I agree that nothing needs to be done with regard  
8 to that. All right. With regard to the letter that was sent  
9 earlier today with regard to the additional voir dire questions  
10 I think related to aiding and abetting. And the one that's  
11 related to the sealed motion, let me ask the defense is there  
12 anything else that you would want to add to that isn't in the  
13 letter that you submitted?

14 MR. DONALDSON: You're speaking about the one this  
15 morning?

16 THE COURT: Yes.

17 MR. DONALDSON: No, nothing more to that one.

18 THE COURT: Let me hear from the government with  
19 regard to that.

20 MR. MEAD: As to the first voir dire request aiding  
21 and abetting liability, the government's not planning to  
22 introduce the judgment against Mr. Briscoe. I'm not sure if the  
23 defense is. If the defense is, I think we'd like a proffer of  
24 relevance. We still haven't gotten an exhibit list from the  
25 defense, so this is all news to us. If that document were to



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1 come in, I think we generally don't object to something like  
2 this in the voir dire.

3 THE COURT: All right. What I'll say with regard to  
4 that is that the issue of aiding and abetting, to the extent  
5 it's relevant, will be something that I can discuss with the  
6 jury in the request to charge. It's not clear to me --  
7 again -- well, let me ask, Mr. Donaldson, does the defense  
8 intend to offer Mr. Briscoe's guilty plea or something like  
9 that? And if so, what is the relevance of that?

10 MR. RICCO: Judge, I'll respond.

11 THE COURT: Yes, Mr. Ricco.

12 MR. RICCO: Your Honor, the issue of his conviction is  
13 not just limited to the entry of a judgment, he's on the  
14 various witnesses list. Well, he's on the defense witness  
15 list, or he will be if he's not. So there's a possibility that  
16 he may testify in this case, and so --

17 THE COURT: Have you spoken with his lawyer?

18 MR. RICCO: The defense has spoken with --

19 THE COURT: Did I sentence Mr. Briscoe? I just don't  
20 remember.

21 MR. RICCO: Yes, according to the docket sheet anyway.  
22 So anyway, Judge, it's for precautionary reasons. I think the  
23 more critical issue is if and when he comes in there's some  
24 type of curative instruction. That's the most important part.

25 THE COURT: I think, again, it's premature. Number

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1 one, I do have a witness list. He's not yet on that list. I  
2 understand he's going to be on that list. I think that if he  
3 does end up testifying, that's a separate issue. And I think  
4 obviously the aiding and abetting liability and the issue of  
5 his guilty plea we can talk about and at that time. But as  
6 things stand right now, I don't intend to ask the jury or  
7 provide them with an instruction with regard to aiding and  
8 abetting at this juncture. Okay.

9 Is there anything else that the parties wish to add to  
10 the arguments? Understanding the nature of the filings that  
11 both parties put in, is there anything the parties would like  
12 to add with regard to the motion *in limine* that remains  
13 outstanding with regard to athlete-one, excuse me athlete-two?

14 MR. MEAD: The only things I'll say, your Honor, is we  
15 submitted a letter to the Court on Saturday night with an  
16 updated set of exhibits. I think the law was incredibly clear  
17 that we should -- the exhibit shouldn't be -- you know -- the  
18 text we're trying to -- shouldn't come in even before we  
19 submitted that letter. I think given the dramatically narrowed  
20 scope of the messages we are planning to introduce, almost all  
21 of the statements by athlete-two are for questions that we're  
22 planning to introduce. And we're open to a limiting  
23 instruction that they're not being offered for their truth. I  
24 think this is -- there's clear Second Circuit law saying that  
25 messages we're trying to preclude don't come in. And I think

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1 it would turn the trial into a bit of a circus if they were to  
2 come in. I'm happy to answer any other questions from the  
3 Court, otherwise we'll rest on our submission.

4 THE COURT: Mr. Donaldson.

5 MR. DONALDSON: Judge, notwithstanding the  
6 government's second letter related to this particular  
7 witness's -- I'm going to call them communications. And it  
8 doesn't matter in my opinion whether or not they are questions,  
9 statements, abbreviations, anecdotes. It doesn't matter. In  
10 my humble opinion as the government said, the Second Circuit is  
11 crystal clear related to persons who have, quote, unquote,  
12 would be testifying that have extreme views on race, and in  
13 this particular case this witness has extreme -- and I'm saying  
14 super extreme views. Let me take it back. This witness has  
15 indicated that he is a devout racist in my opinion. He has  
16 indicated that by his text messages --

17 THE COURT: Could you do me a favor. The filings have  
18 been made.

19 MR. DONALDSON: Sorry, Judge. Pardon me. In my  
20 opinion the witness has indicated certain views. We would --  
21 it's our belief that those views are of a nature that require  
22 the responses that I put in my motion *in limine*. I think that  
23 notwithstanding the limited nature of the government's letter  
24 realistically -- and I think that's what I'm basing this on,  
25 realistically the jury will have to put some type of

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1 credibility, some type of emphasis, some type of something on  
2 those statements, those questions. Inside the questions, the  
3 context of those questions do specifically relate to material  
4 issues in this case. The answers to those questions -- and  
5 likely, if I can go a step forward, like we say generally,  
6 questions and answers is what is evidence, so.

7 THE COURT: The answer is evidence.

8 MR. DONALDSON: The answer is evidence. So in this  
9 particular situation if the witness is asked a question and  
10 there's an answer given, then I imagine the government's going  
11 to use that answer as part of the evidence to accomplish a  
12 particular goal that they're seeking. In my opinion it's a  
13 sandwich now. One, the answer not relevant without the  
14 question, which means the jurors are going to have to put some,  
15 in my opinion, some weight on the question and where the  
16 question came from. Just because of the nature of the  
17 information contained in my motion *in limine* -- forgive me for  
18 my initial statements.

19 THE COURT: It's okay.

20 MR. DONALDSON: I firmly believe that the jury should  
21 be allowed to hear the contents of my motion *in limine* to  
22 properly judge the nature of the question and answer that were  
23 equal evidence that they will be asked to decide whether it's  
24 credible. And again, just my experience in doing several of  
25 these fraud cases in this district and other districts, I am

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1 confident that at the end of this case the prosecutor is going  
2 to do what they do well, which is try to add things up, this  
3 plus this equals that. This person said this equals that. We  
4 know this happened, this happened, so this must be what it is.  
5 That's going to happen, which means they're going to use those  
6 text messages to do that and to satisfy their requirement for  
7 meeting certain elements. That means they're going to be  
8 asking the jury to, again, come to some kind of decision  
9 related to those questions and those answers. So with that  
10 I'll rely on my record and my papers, but I want to make sure I  
11 reinforce that.

12 THE COURT: Okay.

13 MR. DONALDSON: Once again I'm sorry for the first  
14 part.

15 THE COURT: That's okay. Anything else from the  
16 government?

17 MR. MEAD: Not unless the Court has questions, your  
18 Honor.

19 THE COURT: Now I'll address the government's  
20 outstanding motions *in limine*. First, the government filed a  
21 motion on September 5, 2024, to preclude cross-examination of  
22 athlete-three and athlete-three's mother regarding  
23 athlete-three's 2019 NCAA suspension, as well as any other  
24 evidence regarding that suspension and the circumstances that  
25 led to that suspension.

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1           Second, the government filed a sealed motion on  
2     September 12, 2024, to preclude defendant from introducing  
3     certain text messages sent and received by athlete-one, a  
4     victim in this case who the government does not intend to call  
5     to testify. I think I misspoke. I think the outstanding  
6     motion is athlete-one. I apologize, a victim in this case who  
7     the government does not intend to call to testify. Third, the  
8     government filed a sealed motion on September 16 to preclude  
9     cross-examination of or to the introduction of evidence  
10    regarding certain categories of evidence regarding athlete-two,  
11    another victim in this case.

12           By letter dated September 21, defendant informed me  
13    that he is not objecting to the government's September 5th or  
14    September 16th motions *in limine*; therefore, those motions are  
15    granted as moot, and defendant is precluded from  
16    cross-examining athlete-three and athlete-three's mother  
17    regarding the matters identified in the government's September  
18    5th letter, and athlete-two about the matters identified in the  
19    government's September 16th letter. In its September 12, 2024  
20    motion *in limine*, the government argues that since it does not  
21    intend to call athlete-one, I should exclude certain text  
22    messages sent and received by athlete-one. In addition, the  
23    government indicates that it intends to introduce text messages  
24    between athlete-one and Charles Briscoe, a co-conspirator, but  
25    that it does not intend to introduce any of athlete-one's

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1 out-of-court statements for their truth; and that it consents  
2 to a limiting instruction making clear that none of  
3 athlete-one's statements are being admitted for their truth.

4 The government filed its -- excuse me. The defendant  
5 filed its opposition on September 18, 2024, and the government  
6 filed its reply on September 19. By sealed letter dated  
7 September 21, the government provided me with the exhibits it  
8 intends to offer at trial which consist of five text chains  
9 between athlete-one and Briscoe, two of which only include text  
10 messages sent from Briscoe to athlete-one.

11 Defendant opposes the government's motion on two  
12 grounds. First, defendant argues that "it does not matter that  
13 athlete-one is now not testifying, and as such not subject to  
14 cross-examination" because "the government is still attempting  
15 to use the words of an individual that undeniably harbors bias  
16 to assist in convicting defendant; and therefore, he should be  
17 able to impeach athlete-one with his prior text messages."  
18 Second, defendant argues that Rule 106 of the Federal Rules of  
19 Evidence requires the admission of the text messages in order  
20 to establish the "full context of possible bias" of  
21 athlete-one. Having considered the parties' submission and the  
22 universe of text messages sent by athlete-one the government  
23 intends to admit at trial, I find that the text messages that  
24 are the subject of the motion *in limine* have no probative  
25 value, and are thus inadmissible under Federal Rule of Evidence

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1 402. Therefore, the government's motion to preclude those text  
2 messages is granted.

3 With regard to impeachment of a non-testifying  
4 witness. As an initial matter I find that if athlete-one does  
5 not testify, and if none of his statements are admitted for the  
6 truth of the matter asserted, then those statements are not  
7 hearsay, and defendant will not be permitted to impeach  
8 athlete-one's credibility. Federal Rule of Evidence 806  
9 establishes the basis on which a non-testifying witness may be  
10 impeached. Under that rule "when a hearsay statement has been  
11 admitted in evidence, the credibility of the declarant may be  
12 attached by any evidence which would be admissible for those  
13 purposes if the declarant had testified as a witness. The  
14 advisory committee note explain that "the declarant of a  
15 hearsay statement which is admitted in evidence is in effect a  
16 witness" and that therefore "his credibility should in fairness  
17 be subject to impeachment as though he had in fact testified."

18 Here, defendant argues that it "does not matter that  
19 athlete-one is now not testifying, and as such not subject to  
20 cross examination" because the jury must be informed of  
21 athlete-one's bias text to assess the "weight or veracity of  
22 the statements and for completeness." This argument is contrary  
23 to law and ignores the fact that because none of athlete-one's  
24 statements are being offered for their truth, his credibility  
25 is not at issue. Thus, the jury need not consider the veracity



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1 of any of athlete-one's statements since they are not being  
2 admitted for their truth, and any impeachment evidence is not  
3 admissible. And I'm citing *United States v. Menendez* there,  
4 2024 WL 2867107 at 1, and also cite which cites *United States*  
5 *v. Paulino*, 445 F.3d 2011 at 2017.

6 The fact that athlete-one is a victim, and therefore a  
7 "critical" witness does not alter my analysis or render the  
8 text message at issue admissible. As the Second Circuit has  
9 "previously made clear that a district court need not allow  
10 impeachment even of a central figure whose  
11 out-of-court-statement were not admitted for their truth."  
12 Citing *United States v. Reagan* there, 103 F.3d 1072 at 1083.  
13 In addition, defendant also argues that "the government is  
14 attempting to use athlete-one's text messages for their truth  
15 and disguising it as context." Assuming the text messages sent  
16 by athlete-one would serve as critical evidence if the  
17 government were to ignore -- excuse me, if the jury were to  
18 ignore my instruction and consider such statements not as  
19 context for Briscoe's text messages, but rather for their  
20 truth, then perhaps there might be some marginal probative  
21 value to athlete-one's credibility.

22 However, defendant has failed to highlight even a  
23 single text message raising this concern. Instead, defendant  
24 highlights two exchanges between athlete-one and Briscoe that  
25 it contends are "good examples" of the government's purported

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1 attempt to introduce athlete-one's statement for their truth.  
2 These exchanges, however, one of which the government no longer  
3 seeks to admit, do not illustrate or support defendant's  
4 argument. Each of the four purportedly hearsay statement by  
5 athlete-one are questions, not affirmative statement. The law  
6 is clear that questions are not assertions, and I'm citing  
7 *United States v. Coplan*, 703 F.3d 46 at 84, as well as  
8 *Headley v. Tilghman*, 53 F.3d 472 at 476. Defendant failed to  
9 explain why athlete-one's questions are affirmative statements,  
10 or how his questions contain facts. Thus, I do not credit  
11 defendant's argument that these exchanges reflect athlete-one  
12 "identifying people and discussing alleged facts related to  
13 material issues." Let alone defendant's suggestion that the  
14 government is "disguising" athlete-one's statement as context  
15 in an attempt to invite the jury to consider the text for their  
16 truth.

17 To the contrary, athlete-one's non-hearsay questions  
18 involve precisely the intended use proffered by the government  
19 context for Briscoe's statement, which are factual assertions  
20 that are admissible for their truth as co-conspirator  
21 statement. Indeed of the ten statements that the government  
22 seeks to admit, seven are questions, and three are statements  
23 that are plainly not being admitted for their truth. Thus,  
24 because defendant fails to support this argument that  
25 athlete-one's statements are factual assertions that are being

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1 offered for their truth, athlete-one's credibility is not at  
2 issue. Rule 806 does not apply, and defendant will not be  
3 permitted to impeach athlete-one on this basis. With regard to  
4 the Rule of Completeness under Rule 106. Defendant also argues  
5 that if the government is permitted to introduce text messages  
6 between athlete-one and Briscoe, the admission of which  
7 defendant has not objected to, that the text messages that are  
8 the subject of the government's motion *in limine* should be  
9 admitted pursuant to Rule of Completeness under Federal Rule of  
10 Evidence 106.

11 This argument is similarly unavailing. Under the Rule  
12 of Completeness "if a party introduces all or part of a writing  
13 or recorded statement, an adverse party may require the  
14 introduction at that time of any other part or any other  
15 writing or recorded statement that in fairness ought to be  
16 considered at the same time." I'm citing there Rule 106. The  
17 Second Circuit has interpreted the doctrine of completeness to  
18 "require that a statement be admitted in its entirety when this  
19 is necessary to explain the admitted portion, to place it in  
20 context, or to avoid misleading the trier of fact, or to ensure  
21 a fair and impartial understanding of the admitted portion."  
22 I'm citing *United States v. Marin*, 669 F.2d 73 at 84. This is  
23 true "even though a statement may be hearsay." And I'm citing  
24 *Coplan*, 703 F.3d 46 at 85.

25 Defendant does not identify nor have I located any

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1 case in which a court permitted impeachment material of a  
2 non-testifying witness under any rule, let alone Rule 106. Nor  
3 has the defendant cited any case law where a court has allowed  
4 the introduction of entirely separate statements on a different  
5 subject matter to provide context to an admitted statement. I  
6 decline to do so here. In addition, Rule 106 "does not render  
7 admissible evidence that is otherwise inadmissible." I'm  
8 citing *United States v. Elmanni*, 2023 WL 2770242 at 7. Nor  
9 does Rule 106 "compel admission of otherwise inadmissible  
10 hearsay evidence." I'm citing *United States v. Gotti*,  
11 457 F. Supp. 2d 395 at 3697 or function as "a mechanism to by  
12 pass hearsay rules of any self-serving testimony" and I'm  
13 citing *United States V. Gonzalez*, 399 F. App. 641 at 645.

14 Here, of course, defendant does not intend to  
15 introduce self-serving testimony, but the same general  
16 principle applies. Defendant may not use the rule to introduce  
17 evidence that is advantageous though otherwise admissible  
18 hearsay. To be clear, the fact of the text messages are  
19 hearsay is not sufficient to defeat defendant's Rule 106. As  
20 the Second Circuit recently explained "when the omitted portion  
21 of a statement is properly introduced to correct a misleading  
22 impression or place in context that portion already admitted,  
23 it is for this very reason admissible for a valid non-hearsay  
24 purpose to explain and ensure the fair understanding of the  
25 evidence that has been already introduced." And I'm citing

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1 *United States v. Williams*, 930 F.3d 44 at 60. However, as  
2 *Williams* also clarified, and as defendant himself acknowledges  
3 in citing *Williams*, the completeness doctrine "has never  
4 required the admission of portions of a statement that are  
5 neither explanatory of nor relevant to the admitted passages."  
6 Defendant has not proffered any reason why the text messages  
7 are relevant to explain or correct a misleading impression  
8 regarding the text messages sent and received by athlete-one  
9 that the government seeks to admit.

10 Lastly, defendant argues that given athlete-one clear  
11 bias it is "reasonable that athlete-one might have distorted or  
12 fabricated his words against defendant." It is worth noting,  
13 however, that it appears that athlete-one did not know relevant  
14 details about the defendant at the time many of the text  
15 messages were sent and/or received. And defendant has not  
16 provided any evidence otherwise. In addition, defendant does  
17 not identify any facts or words he believes were "distorted or  
18 fabricated" in the text messages the government seeks to admit.  
19 Therefore, the text messages that are the subject of the motion  
20 *in limine* are not admissible pursuant to Rule 106.

21 Now, the issue about what those text messages  
22 concerned and the severity of the bias, I need not address, and  
23 they don't impact my decision here as the law is clear.  
24 Accordingly, the government's motion is granted. Okay. Any  
25 questions from the government?

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1 MR. MEAD: The accidental reference by defense  
2 counsel, we'd asked that that either be stricken from the  
3 transcript or sealed, whatever is most convenient.

4 MR. DONALDSON: I would ask that it be stricken. I  
5 agree.

6 THE COURT: Okay.

7 MR. DONALDSON: I was going to ask that it either be  
8 stricken or sealed, whatever is easier for the reporter or the  
9 Court.

10 THE COURT: All right. What may need to happen though  
11 is the parties, I don't think the court reporter is in a  
12 position to figure out what statement should be stricken. I  
13 have no objection to the statements being stricken. In fact,  
14 the defense is in agreement, so I just ask the parties when you  
15 get the draft of the transcript, please communicate with the  
16 court reporter to make sure that those statements are stricken.  
17 Yes, Mr. Donaldson.

18 MR. DONALDSON: One last thing. I'm going to hand the  
19 government a subpoena for Mr. Parsons.

20 THE COURT: Well, let me ask. It's not clear to me.  
21 Is it your belief, Mr. Donaldson, that Mr. Parsons is under the  
22 government's control?

23 MR. DONALDSON: It's my belief that the government has  
24 been in contact with Mr. Parsons. The short answer to that  
25 question is yes. The long answer to that question is my belief

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1 is that Mr. Parsons not in New York City. The government has  
2 been in contact with Mr. Parsons over the last three weeks  
3 either it's been in person and/or via phone and/or via video.  
4 I think it's a professional courtesy, as we always do and  
5 always and sometimes provide the government with a subpoena for  
6 a witness that they had initially were going to call that we're  
7 now letting them know that we'd like to call, consider calling.

8 THE COURT: I understand Mr. Parsons is represented  
9 is. That correct, Mr. Mead.

10 MR. MEAD: It is, your Honor.

11 THE COURT: All right. So Mr. Mead can provide the  
12 subpoena to the attorney, and we will see what happens  
13 thereafter. I'm not sure that -- it's not clear to me that  
14 quite frankly, Mr. Donaldson, that the witness is under the  
15 control of the government. It's not a government witness.  
16 It's someone, yes, who's a victim. If you can cite me case law  
17 that a victim is in fact under the control of the government  
18 such that the government is otherwise -- well, so it's not  
19 clear to me that that is in fact the case. So the government  
20 can provide -- have you been in contact with the lawyer?

21 MR. DONALDSON: Judge, no, honestly. This is, as the  
22 Court can see, this is involving a rather fluid situation.  
23 This is no difference from the government providing us a  
24 subpoena for someone that they thought we were, whatever. And  
25 so I think it's appropriate that as a professional courtesy we

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1 provide them with a subpoena and ask them to give it to  
2 Mr. Parsons' attorney. They can give me Mr. Parsons'  
3 attorney's information, and I'll do the same thing. But the  
4 goal is to make sure he gets this and that we can try to get  
5 him. That's the goal. The goal is to make sure he gets it and  
6 we can get him here. They want to say he's not under their  
7 control, that's their position.

8 THE COURT: It's not a question of position. All  
9 right. It's a question of law. So it is their position. And  
10 that's all I was saying is, it's not clear to me that he's  
11 under their control. No one has cited me any case law with  
12 regard to that. Now with regard to any expected testimony that  
13 Mr. Parsons may give, I may require some proffer as to that  
14 because we're not necessarily going to call him. And he won't  
15 necessarily be a witness merely to elicit the bias which I have  
16 just excluded.

17 MR. DONALDSON: I will not do that, Judge.

18 THE COURT: All right.

19 MR. DONALDSON: I will not do that, Judge.

20 THE COURT: Okay. But, well, all right. Yes,  
21 Mr. Mead.

22 MR. MEAD: So our position is he's not under our  
23 control. I will happily provide defense counsel with the  
24 contact information for the attorney. I will certainly do  
25 that, but I don't think the subpoena is binding on us in any



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1 way. I share the concerns just raised by the Court. I think  
2 there may need to be briefing on that subject. It seems  
3 relatively significant to the government. I don't think we  
4 necessarily need to deal with that today of course. This is  
5 the second reference just this morning to kind of new defense  
6 witnesses. There's a reference to Mr. Briscoe. There's a  
7 reference to Mr. Parsons. They haven't been on the defense  
8 witness list. We still haven't gotten any 26.2 material.  
9 We've learned that the judgment for Mr. Briscoe might be coming  
10 in based on a voir dire question. We'd ask again that the  
11 Court direct the defense to provide us an updated witness list,  
12 26.2 material and an exhibit list, some sort of very soon  
13 deadline, your Honor.

14 THE COURT: Okay.

15 MR. RICCO: Your Honor, we have no objection to the  
16 Court suggesting that to us. This is a defense. The defense  
17 is fluid. The government hasn't put one witness on the witness  
18 stand yet, and we're doing the best we can to comply with  
19 fairness.

20 THE COURT: Let's get the trial underway and I'll take  
21 an assessment concerning that. With regard to witnesses.  
22 Obviously the ruling on Mr. Parsons was just today; however, it  
23 clearly was anticipated that the defense wanted him as a  
24 witness, and thus a subpoena was provided to the government  
25 today. So I understand that the defense is doing as best they

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1 can, but what I would say is that as soon as -- I'm not exactly  
2 sure what happened with Mr. Briscoe, but let me ask. Are there  
3 any additional witnesses other than the witnesses that have  
4 been discussed, the three, Mr. Briscoe and now Mr. Parsons that  
5 the defense intends to call in its case? Yes.

6 MR. DONALDSON: Judge, we're not in a position to say  
7 that we are not. We're trying to be as fair as we can. We  
8 provided the witnesses that we've thought about at that time.  
9 As I said, this is a fluid situation. The last one regarding  
10 the last witness was related to what just happen. So as we --  
11 something comes up, then I will immediately tell the  
12 government. I think Mr. Mead will agree that I've been trying  
13 to as fair as possible. If something comes up, I'll tell him  
14 quickly.

15 THE COURT: Sure. I guess what I would say then with  
16 regard to the witnesses currently that have been identified,  
17 particularly Mr. Briscoe, if there are documents like whether  
18 it's a plea allocution, his guilty plea, whatever it may be  
19 that the defense intends to introduce, I would ask that you  
20 provide notice to the government by the close of business  
21 tomorrow with regard to Mr. Briscoe. I mean, in other words,  
22 there are certain documents -- there may be certain documents  
23 you're not sure about; but with regard to any documents  
24 relating to his guilty plea, his sentencing, whatever, whatever  
25 you intend to use with him, I'd ask that you provide the

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1 government with that information.

2 MR. DONALDSON: Certainly, Judge. Absolutely.

3 THE COURT: Okay. All right. Let me ask, is there  
4 anything else that we need to deal with, cause the next thing I  
5 was planning on doing is Ms. Disla would go across the way, let  
6 Mr. Letterman know that he is excused and bring however many of  
7 the 55 folks over here. In a moment I'll check to see whether  
8 we can position them where they were when we were doing jury  
9 selection in 110.

10 MR. DONALDSON: That was the question we had this  
11 morning with the government whether or not we were going to try  
12 to have those same two, three, in the same places.

13 THE COURT: That would be my intent, but I have to  
14 check with my staff to see if that's possible. We can take a  
15 break. Yes, Mr. Mead.

16 MR. MEAD: Just a couple of quick things. One is,  
17 it's my understanding that the Court is not going to read the  
18 second proposed voir dire question based on the Court's ruling  
19 on the sealed motion *in limine*?

20 THE COURT: That's correct, yes. Sorry.

21 MR. MEAD: Not a problem. Your Honor, we previously  
22 discussed a protective order that there's going to be a lot of  
23 PII that is necessary to distinguish the defendant from his  
24 father in this case. There's a protective order that's been  
25 agreed upon between the parties. So if the press asked for

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1 exhibits, some of that PII will be redacted. We can hand that  
2 up to the Court's deputy law clerk.

3 THE COURT: Okay. And is this something -- the  
4 parties are in agreement. I will sign and it will be placed on  
5 the docket.

6 MR. DONALDSON: Yes.

7 THE COURT: Thank you.

8 MR. MEAD: And then finally just for the Court's  
9 reference, there are a substantial number of documents that we  
10 intend to move into evidence tomorrow at some point. We have  
11 submitted that list of documents of exhibits to the defense by  
12 email last night. It is our hope of course that the defense  
13 will let us know any objections to any of those exhibits so  
14 that we don't get bogged down tomorrow when we're trying to  
15 introduce them.

16 THE COURT: Okay. I'm not sure they're going to be  
17 any objections, but if I could just get a copy of whatever the  
18 list of those documents are. Yes, Mr. Donaldson.

19 MR. DONALDSON: I'm sorry. I forgot what I was  
20 responding to.

21 THE COURT: Mention of exhibits.

22 MR. DONALDSON: You don't know whether there was going  
23 to be an objection to those. We did receive that email, the  
24 email was sent this morning about 1:00, so actually I didn't  
25 see it until just now. And there are maybe three or four dozen

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1 exhibits here, so I don't know right now whether we will be  
2 objecting to any. We will get back to the Court and the  
3 government as quick as possible.

4 THE COURT: All right. Thank you. Unfortunately I  
5 was just informed that we're not going -- because some of our  
6 jurors actually went and were picked by Judge Rochon in  
7 connection with another trial and some of them are not here.  
8 We are not going to be able to reconstitute what we had done.  
9 We'll call jurors. We'll put them in the box. We'll put them  
10 in the first couple of rows. I basically -- I'll do the two  
11 questions initially when they come in, excuse those jurors and  
12 then we'll start putting people in the box. And I will start  
13 with the voir dire of juror number one. Yes, Mr. Mead.

14 MR. MEAD: Does the Court want the email we sent the  
15 defense?

16 THE COURT: Sure. That would be great.

17 MR. DONALDSON: So the 32 that I have here, we can  
18 just get rid of those. We are going to start over?

19 THE COURT: Correct.

20 MR. MEAD: So the record is clear, I just handed over  
21 an email from me from September 23 at approximately 1:18 a.m.

22 THE COURT: Okay. I'm heartened that everybody is  
23 working to wee in hours in the morning. Nothing wrong with a  
24 little hard work and elbow grease, although you should also get  
25 your sleep. Okay. Thank you.

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1 Any objection to Ms. Disla going across the way  
2 indicating to Mr. Letterman that he is excused and bringing  
3 however many folks over here who already heard my initial  
4 comments over here, and then we'll begin with those folks and  
5 see how many hopefully the jurors we can get out of that?  
6 Anything we need to do before we do that?

7 MR. DONALDSON: No. Thank you.

8 MR. MEAD: No objection, your Honor.

9 THE COURT: Okay. If we can take a quick break. Why  
10 don't we come back by 10:30 cause I want everybody here as we  
11 bring everybody in. Okay. Thank you. We'll stand adjourned.

12 (Adjourned to September 24, 2024 at 9:00 a.m.)  
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